

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**PUBLIC HEARING**  
**AUGUST 10, 2006**

The Lake County Board of Adjustment met Thursday, August 10, 2006 in the Commission Chambers on the second floor of the Round Administration Building in Tavares, Florida to consider requests for variances and any other petitions that may be submitted in accordance with Chapter XIV of the Lake County Land Development Regulations.

**Board Members Present:**

Howard (Bob) Fox, Jr.  
Henry Wolsmann, Vice Chairman  
Ruth Gray  
Mary Link Bennett  
Donald Schreiner, Chairman

**Board Members Not Present:**

Darren Eslinger  
Carl Ludecke

**Staff Present:**

Terrie Diesbourg, Director, Customer Services Division  
Anita Greiner, Senior Planner, Customer Services Division  
Anna Ely, Public Hearing Coordinator, Customer Services Division  
Sherie Ross, Public Hearing Coordinator, Planning and Development Services Division  
Kimberly Williams, Assistant County Attorney

Chairman Schreiner called the meeting to order at 1:05 p.m. He asked that the owner/applicant give staff at least 24 hours before proceeding to the zoning counter if a variance is approved at this public hearing. He confirmed Proof of Publication for each case as shown on the monitor. He noted for the record that there was a quorum present.

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Adjournment	3:55 p.m.	

**Minutes**

**MOTION by Mary Link Bennett, SECONDED by Henry Wolsmann to approve the June 8, 2006 and July 13, 2006 Board of Adjustment Public Hearing minutes, as submitted.**

**FOR: Fox, Jr., Wolsmann, Bennett, Schreiner**

**AGAINST: None**

**NOT PRESENT: Eslinger, Gray, Ludecke**

**MOTION CARRIED: 4-0**

**Discussion of Consent Agenda**

Anita Greiner, Senior Planner, requested that BOA#92-06-5 be removed from the consent agenda and placed on the regular agenda.

Ruth Gray came into the meeting.

Chairman Schreiner explained the procedure for hearing cases on the consent agenda.

There was no one on the Board nor anyone in the audience who had an objection to the following cases remaining on the consent agenda: BOA#90-06-5, BOA#95-06-4, BOA#97-06-5, and BOA#98-06-4

**Consent Agenda:**

<b>CASE NO.:</b>	<b>BOA#90-06-5</b>	<b>AGENDA NO.:</b>	<b>1</b>
<b>OWNERS:</b>	<b>Rosemary Rauch and Adam &amp; Julie Tytler</b>		
<b>APPLICANTS:</b>	<b>Rosemary Rauch and Julie Tytler</b>		

<b>CASE NO.:</b>	<b>BOA#95-06-4</b>	<b>AGENDA NO.:</b>	<b>6</b>
<b>OWNERS:</b>	<b>Thomas and Lynnette Dusablon</b>		
<b>APPLICANT:</b>	<b>Leslie Campione, P.A.</b>		

<b>CASE NO.:</b>	<b>BOA#97-06-5</b>	<b>AGENDA NO.:</b>	<b>8</b>
<b>OWNER:</b>	<b>Marian McKinney</b>		
<b>APPLICANT:</b>	<b>Catherine Reid</b>		

<b>CASE NO.:</b>	<b>BOA#98-06-4</b>	<b>AGENDA NO.:</b>	<b>9</b>
<b>OWNERS/APPLICANTS:</b>	<b>Jose and Ivonne Carrasco</b>		

**MOTION by Henry Wolsmann, SECONDED by Mary Link Bennett to take the following actions on the above consent agenda:**

<b>BOA#90-06-5</b>	<b>Approval with one condition</b>
<b>BOA#95-06-4</b>	<b>Approval with conditions</b>
<b>BOA#97-06-5</b>	<b>Approval</b>
<b>BOA#98-06-4</b>	<b>Approval</b>

**FOR:** Fox, Jr., Wolsmann, Gray, Bennett, Schreiner

**AGAINST:** None

**NOT PRESENT:** Eslinger, Ludecke

**MOTION CARRIED:** 5-0

CASE NO.:

BOA#91-06-4

AGENDA NO.:

2

OWNER/APPLICANT:

Charlene F. Owens

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval of the request to allow a setback of 50 feet from the centerline of Country Club Road and 24 feet from the right-of-way of Topping Place and denial of the request to allow an accessory structure to be constructed on a parcel that is less than one acre in size. She showed the aerial from the staff report on the monitor. She explained that these are two separate building sites. She questioned why the applicant wants to have an accessory dwelling unit because the proposed dwelling unit could be built on this lot as a single-family dwelling unit. There is no reason to connect the two lots together as one lot with an accessory dwelling unit. She showed the site plan from the staff report on the monitor. With the setback variance, Ms. Greiner said the dwelling unit would fit on the subject parcel.

When Mary Link Bennett asked about the size of the structure, Ms. Greiner said a single-family dwelling unit could be any size as long as it meets the impervious surface ratio.

Henry Wolsmann was informed that the letter in the packet from the City of Eustis is for information only. The property is not within the city limits of Eustis.

Charlene F. Owens was present to represent the case. She said the residential structure that she wants to put on the property would have a two-car garage rather than a single garage. Because of her health, she needs to be close to her daughter, who is a registered nurse. Ms. Greiner said there is no restriction on a two-car garage.

Cathy Behnke, daughter of Ms. Owens, said the original house does not have a garage so they bought the adjacent parcel. Her mother does not want to live with her. She explained that they would like to build a two-car garage and mother-in-law suite on the adjacent parcel. However, they need to access the garage from her driveway. That is why they want a unity of title. It is impossible to add a garage to the original house.

Ms. Greiner stated that there is nothing preventing the use of a shared driveway.

With a shared driveway, Ms. Behnke said she had been told that if she sells that lot, she cannot use the garage anymore. If the two lots are tied together, Ms. Greiner said they must be sold together. Ms. Behnke said she understood that.

Chairman Schreiner said it appears that the applicant is putting a restriction on herself that she does not need. Ms. Behnke said she does not want to sell the properties separately. She was concerned that the shared driveway could become an issue in the future.

Ms. Greiner reiterated that she did not feel there is a need for a variance and still recommends denial of the variance for the accessory structure.

Ms. Bennett stated that Ms. Behnke could be creating a problem for the future by joining the properties.

When Ruth Gray said the applicant should never have come before this Board, Ms. Greiner explained that a setback variance is needed.

Ms. Greiner submitted a boundary survey as County Exhibit A and a layout of the proposed house as County Exhibit B.

Ms. Behnke stated that the garage would be almost facing the existing driveway. At the outside door of the garage would be a covered walkway to the side of the original house. When Ms. Gray commented that it would go over the property line of the two lots, Ms. Behnke said that was correct. Ms. Gray felt that could be done with two separate pieces of property and an easement.

**CASE NO.:** **BOA#91-06-4** **AGENDA NO.:** **2**

**OWNER/APPLICANT:** **Charlene F. Owens** **PAGE NO.:** **2**

Ms. Greiner spoke of a perpetual easement that would allow the garage to be closer to the property line. A covered walkway joining the two houses could not be done unless this Board grants a variance to allow an accessory dwelling unit.

When Chairman Schreiner and Ms. Greiner asked if the garage could be placed up to the property line provided there is a maintenance agreement with each other, Kimberly Williams, Assistant County Attorney, said she would need to take a five-minute break to research that.

Ms. Greiner reiterated that it is difficult to show that the intent of the Code is being met in the request for a variance to allow an accessory dwelling unit. This is a neighborhood with all single-family dwelling units. She said staff's reasoning for recommending denial was twofold. No evidence of a hardship has been shown. In addition, the intent of the Code has not been met. All of the lots in this area are small with single-family dwelling units. Combining such small lots and adding an accessory dwelling unit is different than if an accessory dwelling unit were placed on a one-acre lot.

It was decided to allow Ms. Williams time to research the case while the Board proceeds to the next case.

CASE NO.:

BOA#92-06-5

AGENDA NO.:

3

OWNERS/APPLICANTS:

James W. and Karen A. Tyla

Anita Greiner, Senior Planner, explained that she had taken this case off the consent agenda as she had met with Patti Harker, right-of-way manager, Department of Public Works, regarding the vacation of roads in this antiquated subdivision. She submitted a map of the subdivision as County Exhibit A. She said the staff report had been written with the understanding that Anderson Lane was to be the access. When she was at the site, she almost got stuck so she asked the fire inspector to visit the site. The fire inspector said he would not have a problem with it if they corrected the part of Anderson Lane that is impassable. Therefore, she added a condition that staff must visit the site before finalizing the minor lot split to ensure that Anderson Lane had been taken care of; the fire inspector must confirm that Anderson Lane is passable. However, since the staff report was written, she has learned that the owners/applicants may not have the rights to use Anderson Lane as it is a private easement. She spoke to the applicants today before the public hearing started. The Tylas said they know the person who would be able to allow them to use Anderson Lane. They felt comfortable that they can obtain deeded access to be able to use the private easement to get to their property.

When Mary Link Bennett asked if the applicants want to pursue this case before they have written permission to use Anderson Lane, Ms. Greiner said the owners appeared to be confident that they could obtain the deeded access from that owner. However, this Board could continue the case until next month or hear the case now and add a condition that the owners must obtain deeded access. If they don't get the deeded access and it is a condition of the variance, then they would not be able to do the lot split.

Karen Tyla, one of the owners of the subject property, said the property abuts Anderson Lane. They have already received verbal permission to use Anderson Lane. They were instructed to put it in writing, and the owner of the easement will take care of it.

Ms. Greiner pointed out that she has several conditions already recommended for this variance. The deeded access would be an additional condition.

Ms. Tyla confirmed that, if obtained, the deeded access would go with the property forever. She suggested continuing this case as there are other deeded accesses to this property. Ms. Greiner said she can research it if Ms. Tyla would like to continue the case.

There was no one else in the audience who wished to speak.

**MOTION by Mary Link Bennett, SECONDED by Ruth Gray to continue BOA#92-06-5 until the September 14, 2006 Board of Adjustment public hearing and that it be placed first on the agenda.**

FOR:

Fox, Jr., Wolsmann, Gray, Bennett, Schreiner

AGAINST:

None

NOT PRESENT:

Eslinger, Ludecke

MOTION CARRIED: 5-0



**CASE NO.: BOA#93-06-5****AGENDA NO.: 4****OWNER: Grace Mellado**  
**APPLICANT: Carlos Perez**

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with conditions. She showed the aerial from the staff report on the monitor and noted the letter of opposition. She submitted two maps as County Exhibits A and B. She pointed out on the map the property owned by the writer of the letter of opposition. In response to Chairman Schreiner, Ms. Greiner said the subject property has five acres and one dwelling unit on it.

Ruth Gray confirmed with Ms. Greiner that these parcels would be the smallest in the area. Ms. Greiner reiterated that this property has been rezoned to R-1 so these smaller parcels would meet the zoning requirements. This is not considered a rural area; the future land use designation is Urban Expansion.

There was no one in the audience who had an objection to this request.

Carlos Perez, applicant, was present to represent Grace Mellado. He said the purpose of the lot split is to allow a mobile home on the property for his granddaughter. The five acres on the front of the property are also owned by Ms. Mellado for a total of ten acres. He has a home on the front five acres; Ms. Mellado has a house on the back five acres. This request would add a mobile home in which his granddaughter would live.

**MOTION by Ruth Gray, SECONDED by Mary Link Bennett to approve BOA#93-06-5 with the following conditions:**

- 1. The two parcels being created through the subject minor lot split cannot be split further utilizing the minor lot split process.**
- 2. The owner must record deed restrictions that require the property owner and future owner(s) to maintain the private easement. Such restrictions must be recorded prior to the recordation of the approved lot split.**

**FOR: Fox, Jr., Gray, Bennett, Schreiner****AGAINST: Wolsmann****NOT PRESENT: Eslinger, Ludecke****MOTION CARRIED: 4-1**

CASE NO.: BOA#94-06-4

AGENDA NO.: 5

OWNERS: Francis Reno and Henry Reno  
APPLICANT: Francis Reno

Anita Greiner, Senior Planner, presented the case and staff recommendation of approval with conditions. She showed the aerial from the staff report on the monitor. She submitted a drawing (County Exhibit A) showing the four proposed lots if a lot line deviation was done. She noted the three letters of opposition included in the staff report and submitted a map (County Exhibit B), which showed the subject property and the properties owned by the writers of the letters of opposition. She said most of the lots in this subdivision are built on single lots. She submitted a plat as County Exhibit C.

Ruth Gray was informed by Ms. Greiner that the smallest requested lot is larger than some of the other smaller lots under single ownership in the subdivision.

Francis Reno said they want to create four buildable lots. The three lots that would be recreated by a lot line deviation would each be 12,500 square feet. Those lots have already been approved. The fourth lot would be 11,400 square feet, a difference of 1100 square feet. That is the lot for which a variance has been requested. The lots in the subdivision vary from .15 to .68 acre. The requested lots are well above the minimum existing lot size in the subdivision. Regarding one of the letters of opposition, he said this will not change the appearance of the subdivision. They want to build three houses similar to the other houses in the neighborhood. No commercial use will take place on any of the lots. If this variance is not granted, it will create a hardship for him personally. This will be his last home where he wants to live out his retirement.

Susan McLeod, writer of one of the letters of opposition, said she had no problem with four buildable lots as long as only single-family dwelling units are placed on the lots. The neighbors do not want multifamily units in the subdivision. Ms. Greiner explains that the current zoning, R-1, allows single-family residences. With this being near the Dairy Queen, she did not want to see more commercial and the resultant additional traffic.

Mr. Reno confirmed that they had no intention of building anything but single-family homes on these lots. There are multifamily dwelling units nearby, but these lots will have only single-family dwelling units, now or in the future.

**MOTION by Mary Link Bennett, SECONDED by Ruth Gray to approve BOA#94-06-4 with the following conditions:**

1. The owners shall submit and complete a lot line deviation to reconfigure the subject six lots and create four lots, one lot being 11,400 square feet and three lots being 12,500 square feet each as indicated on the attached site plan (Exhibit "A").
2. The undeveloped lots must hook up to the central water system provided by the City of Mount Dora.

FOR: Fox, Jr., Wolsmann, Gray, Bennett, Schreiner

AGAINST: None

NOT PRESENT: Eslinger, Ludecke

**MOTION CARRIED: 5-0**

There was a five-minute break.

CASE NO.: BOA#91-06-4 (Continued)

AGENDA NO.: 2

OWNER/APPLICANT: Charlene F. Owens

Ms. Greiner said a maintenance agreement could be done; but if the setbacks were five feet for each parcel, a ten-foot setback would still need to be maintained so the garage could not come right up to the property line on each side. Nothing could be built within those ten feet. In response to Ruth Gray, Ms. Greiner explained that parties on both sides cannot give maintenance agreements to allow each person to build up to the property line. Only one can give the maintenance agreement and then the setback has to remain the same distance between the structures. Ms. Behnke had said that she wants to connect the original house and the garage with a breezeway. Ms. Greiner said that cannot be done unless this Board grants a variance to allow the new house to be accessory dwelling unit.

In response to Ms. Gray, Ms. Greiner said the owner would be required to record a document stating that this property could never be sold as separate parcels. The entire property must always be under the same ownership. Ms. Gray felt the owner may be sorry if this variance is granted.

There was no one else in the audience who wished to address this case.

**MOTION by Ruth Gray, SECONDED by Mary Link Bennett to approve the variance requests in BOA#91-06-4 to allow the owner to construct an accessory dwelling unit on a parcel that is less than one acre in size and to allow the accessory dwelling unit to be 50 feet from the centerline of Country Club Road and 24 feet from the right-of-way of Topping Place.**

Ms. Greiner said the granting of the accessory dwelling unit would require a unity of title.

Ms. Bennett confirmed with Ms. Greiner that an accessory dwelling unit on a parcel less than one acre is in conflict with the Land Development Regulations (LDRs). Ms. Greiner said that is why the applicant is requesting a variance.

FOR: Fox, Jr., Gray, Bennett, Schreiner

AGAINST: Wolsmann

NOT PRESENT: Eslinger, Ludecke

MOTION CARRIED: 4-1

CASE NO.: BOA#96-06-5

AGENDA NO.: 7

OWNERS: Thomas and Terrie Flowers  
APPLICANT: Leslie Campione

Anita Greiner, Senior Planner, explained that this agenda item is an appeal; the appeal process dictates that the person appealing goes first.

Leslie Campione was present on behalf of Thomas and Terrie Flowers. She stated that this property is located on CR 44A, east of Eustis. She submitted a map of the area as Applicant Exhibit A and showed it on the monitor. Being a quarter of a quarter of a quarter of Section 34, Township 19, Range 27, Ms. Campione said this property should be ten acres in size. She pointed out other parcels in the area that are five acres. She said there is a house on the subject property. She showed the aerial from the staff report on the monitor. Mr. Flowers and his wife bought this property in April. It was their intention at that time to divide the property down the middle. They had worked with the surveyor, who was preparing the survey prior to the closing, and asked him to show this division in conjunction with the boundary survey for the closing. The buyers' agent researched the question of whether this property could be divided into two parcels and said a ten-acre tract could be divided into two five-acre parcels, especially in light of all the other factors such as fronting on a paved County-maintained road and sufficient frontage. The real estate listing indicated that the parcel was ten acres in size. She submitted a survey as Applicant Exhibit B and read the overall legal description into the record, noting that this is a short section. In a perfect world, a quarter of a quarter of a quarter would be a ten-acre parcel, and there would be no problem.

Ms. Campione stated that she applied for a lot split, but she was denied because there was not a total of five acres for each parcel. She said she is asking this Board to make an interpretation that because of the short section in this particular location, this does meet the intent of the Code for a ten-acre tract. The staff's position is that this would not be consistent with the Comprehensive Plan or the Land Development Regulations (LDRs). She strongly disagreed with that position. She felt this Board has the authority to make an interpretation on this piece of property that this is a short section and it can be counted as a ten-acre tract, or for purposes of division, two five-acre tracts. She added that the County has long sections as well as short sections so some people have extra property; but they do not have so much extra property that they can get another lot from it. Therefore, this interpretation would not throw off the density that has already been calculated under the Comprehensive Plan.

Bob Fox said he lives on 4.9 acres because of the road. However, he has a certificate indicating that he has five acres. Therefore, he could support the lot split of less than ten acres as long as it was split in the middle so each lot has the same acreage. Ms. Campione said they could have one five-acre tract and one 4.52-acre or two 4.7 acre tracts.

Ruth Gray confirmed that the Flowers purchased the property in April of 2006. When Ms. Gray asked about the survey, Ms. Campione said they were getting the survey done in preparation for the closing. Mr. Flowers had been working with the surveyor and had no reason to believe his land was less than ten acres. At the closing, the survey was not given to Mr. Flowers. When the survey was given to him, he realized that the survey showed a five-acre parcel and a 4.52-acre parcel, the result of this property being in a short section. After this appeal, she said she could submit to the Board of County Commissioners (BCC) a proposal for an LDR change that would give staff the authority, provided certain documentation is provided, to make these types of determinations.

Ron Stevenot, registered surveyor in the State of Florida since 1978 with a practice in Eustis, submitted page 6 of the Manual of Surveying Instructions as Applicant Exhibit C. He said the Manual of Survey Instructions describes how boundary surveys of public lands are made in conformance to statutes and judicial interpretation. Surveys of public lands have been conducted since about 1785. In 1831 the Commissioner of the General Land Office issued detailed survey instructions for the contract surveyors that were surveying public lands. From these instructions of 1831 evolved the Manual of Surveying Instructions. The pages he would be submitting were from the latest edition. He read those sections of Applicant Exhibit C underlined in red into the record. He submitted page 8 of the Manual of Surveying In-

<b>CASE NO.:</b>	<b>BOA#96-06-5</b>	<b>AGENDA NO.:</b>	<b>7</b>
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<b>APPLICANT:</b>	<b>Leslie Campione</b>		

structions as Applicant Exhibit D. He read into the record that section of the General Rules underlined in red in Applicant Exhibit D. He submitted Page 9 of the Manual of Surveying Instructions as Applicant Exhibit E, reading the red underlined sections into the record and discussing Figure 2 on that page.

Regarding the system of rectangular surveys, Mr. Stevenot submitted page 59 of the Manual of Surveying Instructions as Applicant Exhibit F and read the red underlined information on that page into the record. He submitted page 87 of the Manual of Surveying Instructions (Applicant Exhibit G) showing an example of a short section. He explained that when the field dimensions are less than 2640 feet, which is one-half mile, it is commonly called a short section. In the same section, it is possible that not all the legs would be short; some could be short and some could be long. He showed Applicant Exhibit B, the Flowers' survey, on the monitor, noting that the quarter was short all around. On the top, across the quarter, where it should be 2640 feet, the survey shows 2607 feet. Along the east line, where it should also be 2640 feet, it is 2596 feet. Along the south line, it is 2634 feet and it should be 2640 feet. On the west line, it is 2629 feet. These figures are to the nearest foot. Due to these figures, the total acreage is about 157 acres instead of 160, and a ten-acre parcel becomes 9.8 acres, not excluding the portion that was in the roadway. He said he did not prepare this survey.

Chairman Schreiner stated that this Board cannot take an action that would change the Comprehensive Plan; only the Board of County Commissioners (BCC) can do that. However, the Board can hear an appeal with other circumstances or information presented to them that the Board may take into consideration that may indicate is not against the Comprehensive Plan or the Land Development Regulations (LDRs) as stated. Set many years ago, Chairman Schreiner said the first section was a short section, but technically every section was meant to be divided equally; but that did not happen. It was his understanding that this Board is to determine whether this was meant to be a square.

In response to Ms. Gray, Mr. Stevenot said there are 36 sections to a township. A township is 36 miles. Each section is one mile by one mile. When Ms. Gray asked if there were other short and long sections in this location, Mr. Stevenot said he would have had to survey the section to know that information.

When Ms. Bennett asked about a way to take care of this to avoid similar problems in the future, Mr. Stevenot said Ms. Campione had alluded to working with the BCC with input from a surveyor. Ms. Bennett said support is needed from legal, surveyors, and engineers.

Ms. Campione said this particular questions comes up only in the realm of lot splits in large tracts. This would not be an issue in a platted subdivision.

Ms. Greiner presented the case and staff recommendation of denial. She said the papers were signed at the closing on April 28 before the survey was actually completed. If the owners had waited and signed everything after the survey was completed, they would have known at that time that they did not have ten acres. When a request is made that is against the Comprehensive Plan, it is not the intent of the Comprehensive Plan that must be met; it is the actual letter of the law. This Board must determine if the request is consistent with what the Comprehensive Plan says. The Comprehensive Plan says that in the Rural future land use, each parcel must be a minimum of five acres. It does not give the authority for anyone to round up; it does not say five acres, plus or minus; it says five acres.

Ms. Greiner referred to the response of Mike McDaniels, Regional Planning Administrator, Department of Community Affairs, regarding variances inconsistent with the Comprehensive Plan as stated in the staff report. Mr. McDaniels had written that this Board's responsibility is to enforce the Comprehensive Plan; this Board does not have the authority to amend the Comprehensive Plan.

Ms. Greiner said the Comprehensive Plan does not make any provision for a short section or a long section.

**CASE NO.:** BOA#96-06-5**AGENDA NO.:** 7**OWNERS:** Thomas and Terrie Flowers  
**APPLICANT:** Leslie Campione**PAGE NO.:** 3

There were short sections when the Comprehensive Plan was written. If short sections were to be taken into consideration and treated differently, that would have been written into the Comprehensive Plan.

In response to Ms. Bennett, Ms. Greiner said the applicant is agreeable to splitting the lot so each lot is the same size; but that still would not make two five-acre parcels.

Ms. Gray said the motion could be worded in such a way that the request is not against the Comprehensive Plan such as "in accordance with the provisions of the original federal guidelines when federal markers are produced, they are the law despite any other (what'll I say) findings or demarcations and so for all intensive purposes, this is a purported five acres."

Even if the surveyor went by the markers, Ms. Greiner said this property is not ten acres. The surveyor went by the markers, and he is saying that is not ten acres; it is 9.52 acres.

If this Board would like to have provisions for short sections, Ms. Greiner said there is a method by which the Comprehensive Plan and LDRs can be changed. Ms. Bennett said she would like to see that done.

Ms. Gray said she would like to hear what Ms. Campione has to say. She reiterated that she felt a motion could be worded in such a way as to recognize federal boundaries to dominate regardless of what measurements are made hereafter. When Ms. Greiner said that would need to be answered by the County Attorney's office, Kimberly Williams, Assistant County Attorney, said she would like to emphasize that this Board cannot amend the Comprehensive Plan. Ms. Gray said the Board is not amending the Comprehensive Plan; the Board is interpreting it.

Ms. Greiner said the request has to be consistent with the Comprehensive Plan. Ms. Campione said that is the question. Staff's interpretation is that it is not consistent with the Comprehensive Plan. Ms. Campione said she is asking this Board to come to a different interpretation. The best method may not be to amend the Comprehensive Plan. Perhaps the best idea is for this Board to listen to the facts of each case as opposed to a hard and fast rule. The equities are in favor of looking at what was intended to be when the government surveys were laid out and recognizing this property as a ten-acre tract for purposes of meeting the lot size and density requirements but requiring that it be divided into two equal parcels.

Regarding Mike McDaniel's memo, Ms. Campione said that memo did not speak to this particular situation. He is not a judge; he is not the Attorney General. He offered his opinion. She felt this comes back to home rule. This Board is the County and must decide how to apply the Comprehensive Plan. This is the Board that sits to hear appeals. This Board is being asked to make an interpretation. She believed the decision can be worded in such a way that the request is not in conflict with the Comprehensive Plan.

Ms. Greiner pointed out that Ms. Campione had said that it was Ms. Greiner's interpretation that this did not meet the Comprehensive Plan. The Comprehensive Plan says five acres. She did not know how that could be interpreted any other way. If the Comprehensive Plan said five acre, more or less, then she could make an interpretation; but the Comprehensive Plan does not say that. It says five acres.

If the Comprehensive Plan specifically says five acres and surveyors follow the dictates of the federal guidelines, Ms. Gray said there is a conflict and the Board has a chance to interpret. Ms. Greiner said the surveyor did submit a document to the County indicating 9.52 acres, not ten acres. Ms. Gray stated that she is interpreting this in the way that she is following the original intentions of these federal guidelines.

Chairman Schreiner said he would like to retreat back to the intent of our forefathers that every section was

CASE NO.: BOA#96-06-5

AGENDA NO.: 7

OWNERS: Thomas and Terrie Flowers  
APPLICANT: Leslie Campione

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meant to be the same. That is impossible. He questioned if this Board is permitted to interpret. His objection to this "whole thing" was that this Board cannot deviate from the letter of the Comprehensive Plan; only the BCC can do that. He was informed by Ms. Greiner that this could be further appealed to the Circuit Court.

When Chairman Schreiner asked the size of the property if the dirt part of paved CR 44A were added to the parcel, Ms. Campione said it would bring it up to 9.8 acres. If the acreage were included up to the centerline, Ms. Campione said it would be ten acres. However, the legal description does not include the land up to the centerline even though at some point in time that road was put there; and it was probably much narrower than it is now. Eventually it was "taken." From a density standpoint with all things considered, the overall density is not being increased.

If this appeal is denied, Ms. Bennett asked the recourse. Ms. Campione said there could be two recourses. One would be an appeal to the Circuit Court, which they would not do. The other recourse would be to pursue a very long process of approaching the BCC. She questioned whether making a hard and fast rule would be the best solution as opposed to actually looking at each case and considering testimony as to whether in fact the property is located within a short section, which would come before this Board when that happens. It should not be happening that often. In those instances, she felt it was better for a board to make that decision rather than a staff person. Based on the testimony at this meeting, Ms. Campione said that generally speaking, there appears to be more long sections than short sections. The difference is being made up; there is extra land out there that is not going into lot splits. Deviating slightly off the acreage is not going to affect the overall density of Lake County or of the Rural land use. Therefore, she felt it would be consistent with the Comprehensive Plan to make a determination that because this is a short section and because this Board was presented expert testimony to that effect, this Board could recognize the intent of the original governmental surveys and this could be considered a ten-acre tract that could be divided into two parcels of equal size.

If Ms. Campione is saying that a short section is a problem and that allowing this is not against the Comprehensive Plan, then Ms. Greiner felt this is an issue that should be addressed in the Comprehensive Plan and not by individuals coming before this Board. It would be difficult to know where to draw the line if no standards are set.

Ms. Greiner reiterated that this property was purchased with the new owners not knowing the exact size of the parcel. Ms. Campione did not feel it was fair to make an argument that if the owners had been more informed on the day of the closing, things would have been different. It still may have been necessary to come before this Board even if the circumstances had been different. Ms. Greiner said that was the reason Ms. Campione had cited in her letter for submitting this appeal. Ms. Campione said she did not bring it up at this meeting as she wanted to focus on the interpretation. If this Board would make an interpretation in favor of this case, she would submit, within three months of this hearing, a request for consideration of change in the LDRs by the BCC. She asked the Board to take into consideration the small amount of property involved in this request.

When she was reviewing this case at home, Ms. Gray said she had researched the powers of this Board as an appellate body and as interpreting the LDRs. She learned that appeals were in the same section as variances and treating situations of unfairness. Since they are under the same section, she asked if they could apply the concept of an unfair situation since the property is in a short section. Ms. Campione explained that this is an appeal, not a hardship. Ms. Greiner added that there is a difference between the variances this Board usually hears and an appeal. Variances are usually a variance to the LDRs in which this Board can decide if a variance meets the intent of the Code. In an appeal, this Board is not deciding if there is a hardship or if it meets the intent of the Code. Chapter 14.15.00 talks about variances and appeals. One subsection speaks of the purpose of variances. A separate section discusses appeals.

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Ms. Bennett asked Mr. Stevenot if there is any way to determine how many short and long sections are in Lake County. Mr. Stevenot said that would require a physical survey of every section in Lake County, which would be quite difficult.

Ms. Gray asked if Ms. Campione could draft a motion expressing Ms. Gray's idea of recognizing the intentions of our forefathers. Chairman Schreiner said a recorded statement of each member's reasoning should be included with the vote.

Ms. Gray felt this Board should go back to the historical basis for these boundaries and the recognition that they are more than guidelines; they are mandates stating that these markings were really the basis despite what any other measurements might reveal. Where there is an apparent conflict between the Comprehensive Plan and the early history and development of the law in this field, she felt this Board should interpret the Comprehensive Plan to overrule the letter from the Senior Planner to the applicant.

Helen Jones, a member of audience, asked if this Board had ever heard of "Buyer Beware." Someone did not do his homework before buying the property. Ms. Gray felt it was more than that—perhaps being misled by prior measurements. There is a conflict and a need for an interpretation of the Comprehensive Plan.

Ms. Greiner said the owners have an approved 9.52-acre parcel. However, they want to split it into two lots.

Chairman Schreiner said he felt the intent of the original survey was that the sections were to be divided equally in order that parcels would be subsequently divided into ten acres or equal parcels and that this section is recognized as a short section by survey.

Ms. Gray confirmed with Ms. Greiner that the Comprehensive Plan does not address short or long sections.

In response to Chairman Schreiner, Ms. Greiner said the original legal description was a metes and bounds.

Ms. Campione submitted a proposed motion as Applicant Exhibit H and read it into the record.

"It is the interpretation of the BOA that this parcel may be recognized as a 10 acre parcel that may be divided into 2 equal size tracts and said tracts shall be considered to meet the minimum lot size requirements for Agriculture zoning district and the minimum density requirements of the Rural Land Use. This decision is based on this property being ¼ of a ¼ of a ¼ of a section as established by the original governmental surveys for Lake County, State of Florida and the testimony from the applicant's surveyor that the subject property is in fact a "short section" and therefore this site may be recognized as a 10 acre parcel in conformance with the intention of the rectangular system of surveys as mandated by the Federal Government."

She then gave the exhibit to Ms. Gray.

**MOTION by Ruth Gray, SECONDED by Mary Link Bennett to overrule the letter written by Anita Greiner, Senior Planner, in BOA#96-06-5.**

Ms. Gray said the basis for her motion was that it is the interpretation that this parcel may be recognized as a ten-acre parcel that may be divided into two equal size tracts, and said tracts shall be considered to meet the minimum lot size requirements for the Agriculture zoning district and the minimum density requirements of the Rural land use designation. This decision is based on this property being a quarter of a



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quarter of a quarter of a section as established by the original governmental surveys for Lake County, State of Florida, and the testimony from the applicants' surveyor that the subject property is in effect a "short section"; and, therefore, this site may be recognized as a ten-acre parcel in conformance with the intention of the rectangular system of surveys as mandated by the Federal Government.

Henry Wolsmann felt strongly that this Board should not take action that conflicts with the visions of the Land Development Regulations or the Comprehensive Plan, and this motion would be doing that.

Howard (Bob) Fox agreed with Ms. Gray.

**FOR: Fox, Jr., Gray, Bennett, Schreiner****AGAINST: Wolsmann****NOT PRESENT: Eslinger, Ludecke****MOTION CARRIED: 4-1**

Ms. Campione stated that she would be submitting something to the BCC for their consideration.

**Introduction**

Chairman Schreiner noted that a new staff attorney was present at the public hearing, Kimberly Williams.

**Adjournment**

There being no further business, the meeting was adjourned at 3:55 p.m.

Respectfully submitted,

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Sherie Ross  
Public Hearing Coordinator

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Donald Schreiner  
Chairman